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US DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FEDERAL TRADE COMMISSION, )  
Plaintiff, ) Civ. No. 6:12cv.1588 DAB 28  
v. )  
THE GREEN SAVERS, LLC, et al., )  
Defendants. )

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S EX PARTE MOTION FOR  
A TEMPORARY RESTRAINING ORDER WITH ASSET FREEZE, APPOINTMENT  
OF A RECEIVER, OTHER EQUITABLE RELIEF, AND AN ORDER TO SHOW  
CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

This case involves illegal robocalls, which, when answered, transfer consumers to live sales representatives who make false promises about being able to save consumers thousands of dollars by significantly lowering their credit card interest rates. The Green Savers, LLC, and two individuals associated with the company, Christopher Adams and Vikash Jawalapersad (collectively "Greensavers"), have been operating a "lower your credit card interest rate" scam from the Orlando area since late 2010. Greensavers typically first contacts consumers by pre-recorded robocall – sometimes it is the all-too-familiar "Rachel" from "Card Services" calling<sup>1</sup> – directing consumers to "press 1" to speak to a representative about lowering their credit card interest rates. Greensavers then promises to reduce

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<sup>1</sup> "Rachel" has achieved some notoriety for bombarding consumers with unwanted telemarketing calls offering credit card interest rate reduction services and mortgage modifications. See, e.g., Alina Tugend, *Resilience of Robocalls Leaves a Lot of Ears Ringing*, N.Y. Times, June 1, 2012, at B5 (noting consumers' frustration at the onslaught of "Rachel" robocalls).

consumers' credit card interest rates significantly, sometimes to as low as 0%. Greensavers tells consumers that they will save thousands of dollars and will be able to pay off their debt three to five times faster without having to increase their monthly payments. After gathering consumers' sensitive financial information, Greensavers charges consumers anywhere from \$1000 to nearly \$3000 for its interest rate reduction service.

Greensavers' operation is a complete scam. For its exorbitant fee, sometimes Greensavers initiates a three-way call with consumers' credit card companies to request a lowered rate. Other times, Greensavers applies for new credit cards with low introductory annual percentage rates on consumers' behalf. Either way, Greensavers does not, and indeed cannot, deliver the dramatic reductions in interest rates it promises. The few consumers who get some small reduction in their interest rate or receive a new credit card with a short-lived 0% introductory interest rate, could just as easily have obtained either result themselves. Greensavers is not affiliated with lenders and has no unique bargaining power. Its sizable fees are not offset by quick savings from lower interest rates. On the contrary, the fees only increase the debts of consumers already struggling in the current economic crisis.

Greensavers' scheme violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310. In response to a proliferation of companies offering debt relief services during the recent economic decline, the FTC amended the TSR to specifically prohibit certain deceptive and abusive practices rampant in the industry. The new provisions were tailored to address the exact practices Greensavers is engaging in now. Since October 2010, sellers or telemarketers

of debt relief services have been banned from collecting a fee in advance of providing any service to consumers.<sup>2</sup> Greensavers blatantly violates this prohibition, charging consumers for its bogus interest rate reduction service almost immediately.

In fact, Greensavers' entire marketing campaign consists of illegal telemarketing practices. To cast its net as wide as possible, Greensavers uses prerecorded robocalls that consumers have not agreed to receive. Greensavers contacts consumers regardless of whether consumers are registered on the National Do Not Call Registry, or even if they have specifically asked Greensavers to stop calling. Greensavers often hides its identity by using "spoofed" numbers for caller ID and by failing to identify itself during calls.

Hundreds of consumers have complained to the FTC about the Greensavers' illegal robocalls and other deceptive practices. Consumers also have complained to the Better Business Bureau of Central Florida ("BBB"), resulting in the BBB's "F" rating of Greensavers. These complaints are likely only the tip of the iceberg, as a former employee of Greensavers reports she answered hundreds of telephone calls each day from consumers who were irate about Greensavers' business practices. Unfortunately, Greensavers' scam is hardly unique – the FTC has successfully filed cases in this district and elsewhere against nearly identical "lower your interest rate" operations.<sup>3</sup>

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<sup>2</sup> The advance fee is banned unless sellers/telemarketers have reduced or otherwise altered a debt, the consumer has made one payment to the creditor pursuant to that new agreement altering the debt, and the fee is proportional to the total fee for the debt relief services or proportional to the savings achieved. 16 C.F.R. § 310.4(a)(5)(i). A copy of the TSR is filed herewith as Plaintiff's Exhibit ("PX") 1 for the Court's convenience.

<sup>3</sup> See *FTC v. 2145183 Ontario Inc.*, No. 09 C 7423 (N.D. Ill. Nov. 30, 2009); *FTC v. JPM Accelerated Servs., Inc.*, No. 09-2021 (M.D. Fla. Nov. 30, 2009) (Antoon, II, J.); *FTC v. Economic Relief Tech., LLC*, No. 09-3347 (N.D. Ga. Nov. 30, 2009); *FTC v. MCS Programs, LLC*, No. C09-5380-RJB (W.D. Wash. June 25,

Defendants' scam will certainly continue without court intervention. Greensavers previously has been warned that it is violating the law, yet it brazenly has continued its business practices. Recently, the company changed locations and started using a new name, "Advanced Data Solutions," but the illegal practices have remained the same. To bring an immediate halt to Defendants' law violations and to preserve assets for eventual restitution to victims, the Commission asks that the Court enter an *ex parte* temporary restraining order ("TRO") that includes a freeze of Defendants' assets, expedited discovery, and the appointment of a temporary receiver over the corporate Defendant. The requested relief is necessary to prevent continued injury to consumers, the destruction of evidence, and the dissipation of assets, thereby preserving the Court's ability to provide effective final relief.

#### I. **DEFENDANTS' DECEPTIVE BUSINESS PRACTICES**

Since late 2010, Greensavers has blasted consumers with unwanted telemarketing calls, pitching credit card interest rate reduction services that the company is in no position to provide. Greensavers lures consumers in by promising to reduce their credit card interest rates and save them thousands of dollars in payments. Greensavers charges consumers an up-front fee of at least \$1000 and sometimes as high as nearly \$3000, quickly glossing over this fee by assuring consumers that it will be offset by the thousands of dollars in savings that consumers will realize. Those savings never materialize, of course, and consumers are left saddled with Greensavers' exorbitant fee in addition to their existing debt. In difficult economic times, Greensavers is taking advantage of those consumers who can least afford it.

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2009); *FTC v. Select Pers. Mgmt., Inc.*, No. 07CV529 (N.D. Ill. Jan. 29, 2007).

### A. “Card Services” Calling: Defendants’ Outrageous Promises

Greensavers’ scam frequently starts with the all-too familiar robocall purporting to be from a generic-sounding company such as “card member services,” and instructing consumers to “press 1” if they would like to lower their credit card interest rates.<sup>4</sup> Greensavers’ own telemarketing scripts illustrate how the company’s deceptive pitch works. Once consumers are transferred to a live operator, the live agent answers as “Card Services,” and tells consumers: “If you received this message you are eligible to receive interest rates possibly as low as **0%** on your existing credit cards. I just need to ask you a couple of questions to see if you still qualify.”<sup>5</sup> Then, under the ruse of ensuring consumers “qualify” for the interest rate reduction and that the consumer has an “account in good standing,” the agent immediately goes to work gathering the consumer’s credit card number, full or partial social security number, and zip code.<sup>6</sup> If consumers do not qualify, which just likely means they do not have enough of a credit limit available for Greensavers to charge them, telemarketers are instructed to “pull another card until you get one!”<sup>7</sup>

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<sup>4</sup> PX 9, Christman Dec. ¶ 4; PX 14, Gorham Dec. ¶ 4 (“Rachel from Card Services”); PX 12, Heisey Dec. ¶ 3; PX 17, O’Connor Dec. ¶¶ 3-4 (“Rachel” call led to an offer to lower credit card rates); PX 18, Reid Dec. ¶ 3 (“Cardmember services”); PX 20, Walley Dec. ¶ 3 (“Card Member Services”); PX 2, McKenney Dec. ¶ 34 (71 complaints filed mentioning pre-recorded calls) & ¶ 36 (complaints associated with a Greensavers telephone number often mention “Rachel” from “Cardholder Services”); *see also* PX 6, Ramsey Dec. ¶ 14 (former employee who spoke to hundreds of consumers who had received “card services” robocalls). Consumers also report receiving calls from live telemarketers who similarly begin the call by discussing lowering credit card rates. PX 7, Arenburg Dec. ¶ 3; PX 15, Mays Dec. ¶ 4; PX 16, Muniak Dec. ¶ 3; PX 19, Voogd Dec. ¶ 3 (representative identified herself as “Accounts Services”); PX 22, Weisbach Dec. ¶ 3.

<sup>5</sup> PX 6, Ramsey Dec. Att. A (emphasis in original).

<sup>6</sup> *Id.*; *see also* PX 7, Arenburg Dec. ¶ 3 (told “qualified” after divulging credit card information); PX 10, Dye ¶ 4 (“qualified” for a 0% interest rate credit card).

<sup>7</sup> PX 6, Ramsey Dec. Att. A (emphasis in original).

One former employee reports that Greensavers immediately pressured her to obtain consumers' billing information using "any means possible."<sup>8</sup> As a "qualifying agent," she found out in her first day of training that her primary objective was to get the consumer's credit card information.<sup>9</sup> Indeed, in her short tenure at Greensavers, she regularly heard agents "cursing at consumers and using various forms of verbal intimidation in order to make people feel 'stupid' for not agreeing to the interest rate reduction services."<sup>10</sup>

Consumers often divulge their sensitive personal information after being lured in by the promise of impossibly low credit card interest rates<sup>11</sup> and thousands of dollars in savings.<sup>12</sup> Greensavers assures consumers that they will be able to get out of debt "three to five times faster without having to make any higher payments than [sic] just your minimum balance payments."<sup>13</sup> Some consumers resist providing their sensitive financial

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<sup>8</sup> *Id.* at ¶ 11.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See PX 7, Arenburg Dec. ¶ 3 (asked information about her credit cards to determine whether she "qualified"); PX 9, Christman Dec. ¶ 5 (told rates could be 0% and asked for her current credit card information); PX 10, Dye, P. Dec. ¶ 3 (told interest rates could be lowered to at least 4%); PX 13, Jay Dec. ¶ 3 (told rates would be lowered to between 0 and 6.9%); PX 15, Mays Dec. ¶ 5 (promised rates as low as 6.91% and then asked for birth date and social security number); PX 18, Reid Dec. ¶ 5 (social security number given); PX 21, Weisbach Dec. ¶ 3 ("After I told the representative that I was interested, he started asking me a lot of questions."); PX 20, Walley Dec. ¶ 5 (asked to reveal social security number, birth date, and checking account number).

<sup>12</sup> PX 7, Arenburg Dec. ¶ 4; PX 16, Muniak Dec. ¶ 6 (promised at least \$3,500 and up to \$15,000 in savings); PX 18, Reid Dec. ¶ 4 (\$13,000 savings); PX 19, Voogd Dec. ¶ 3 (\$2600/year savings quoted); PX 20, Walley Dec. ¶ 4 (representative "guaranteed that he could help me save a minimum of \$3000 in interest payments").

<sup>13</sup> PX 6, Ramsey Dec. Att. A at 2; see also PX 20, Walley Dec. ¶ 4.

information,<sup>14</sup> and Greensavers typically evades questions challenging the company's legitimacy.<sup>15</sup> Unfortunately, however, Greensavers is far too successful in deceiving consumers and obtaining their credit card information.<sup>16</sup>

Greensavers' objective is to gather consumers' credit card information as quickly as possible likely so that it can waste no time in extracting its exorbitant fee from consumers. Greensavers charges consumers approximately \$1000, and sometimes as much as \$3000,<sup>17</sup> for its interest rate reduction services. Greensavers characterizes the payment as a "no out of pocket expense plan,"<sup>18</sup> making it sound as if the fee will be absorbed by any savings.<sup>19</sup> Of

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<sup>14</sup> PX 15, Mays Dec. ¶ 5 (did not want to reveal personal information). Even when consumers express immediate regret at disclosing their credit card information, Greensavers charges them. See PX 21, Weisbach Dec. ¶¶ 4-5 (hung up on Greensavers after divulging some of her financial information and Greensavers continued to call, and eventually charge her).

<sup>15</sup> PX 15, Mays Dec. ¶ 7 (Greensavers never called consumer back after he demanded to know Greensavers' physical address and phone number) & ¶ 9 (representative gave the consumer a phone number to Visa instead of Greensavers); PX 17, O'Connor Dec. ¶ 5 ("When I repeated my question about why he had more negotiating power than me, he hung up.").

<sup>16</sup> Though we have not been able to ascertain the exact size of Greensavers' operation, the limited financial information we have obtained reveals the business to be lucrative. PX 2, McKenney Dec. ¶¶ 13b-c (Greensavers' bank records reflect over \$100,000 of deposits in two-month period). Further, phone records reveal Greensavers received thousands of calls to its toll-free number. *Id.* ¶ 22. Presumably these calls were from consumers whom Greensavers had contacted.

<sup>17</sup> PX 7, Arenburg Dec. ¶ 13 (\$1290); PX 9, Christman Dec. ¶ 8 (\$900 attempted charge); PX 11, Dye, S. Dec. ¶ 7 & Att. B (\$1990 charged shortly after initial phone call); PX 16, Muniak Dec. ¶ 15 & Att. D (charged \$2990 two days after call); PX 18, Reid Dec. ¶ 13 (charged \$1790 almost immediately); PX 19, Voogd Dec. ¶¶ 6-8 (consumer alerted her credit card companies to avoid \$1290 charge by Greensavers); PX 21, Weisbach Dec. ¶ 8 & Att. B (\$1890); PX 20, Walley Dec. ¶ 8 (\$990 via demand draft); *see also* PX 6, Ramsey Dec. ¶ 12 (Greensavers typically charged \$1000).

<sup>18</sup> PX 6, Ramsey Dec. Att. A at 2; *see also* PX 7, Arenburg Dec. ¶ 6 ("She told me I would not have any out-of-pocket expenses to use the service because the savings I realized would exceed the fee."). Other consumers are told they will not be charged until Greensavers delivers the service. See PX 19, Voogd ¶ 3.

<sup>19</sup> Some consumers are told they will not be charged until after Greensavers has achieved rate reductions. See PX 7, Arenburg Dec. ¶ 6 (consumer was "promised that [the] fee would not be collected until after the company completed all the interest rate reduction work").

course, Greensavers charges consumers right away – long before Greensavers has delivered any savings to consumers. When consumers see the charge by Greensavers and try to challenge it, in rare instances Greensavers will issue a refund;<sup>20</sup> more often than not, however, Greensavers simply does not respond to consumers' complaints.<sup>21</sup>

Greensavers is fully aware that its activities are illegal. To obtain a telemarketing license to operate in the state, the company submitted an application with the Florida Department of Agriculture and Consumer Services ("FDACS"), attaching telemarketing scripts and other materials. FDACS rejected Greensavers' initial application, in part because Greensavers collected an up-front fee for debt relief services, in violation of the TSR.<sup>22</sup> Greensavers responded by saying that the charge "is only initiated after [the] product is fulfilled and delivered."<sup>23</sup> This could only be true, of course, if the unwanted telemarketing call is Greensavers' "product," since that is all the company delivers.

Greensavers' application to FDACS included multiple versions of its telemarketing

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<sup>20</sup> See PX 22, Wineberg Dec. ¶ 7 (received a refund from Greensavers on behalf of her elderly mother). Other consumers have been successful in obtaining chargebacks from their credit card companies. PX 11, Dye, S. Dec. ¶ 13 & Att. I.

<sup>21</sup> See PX 4, Downing Dec. ¶ 7 (Greensavers only responded to two of the sixteen BBB complaints forwarded to it by the BBB); *see also* PX 16, Muniak Dec. ¶ 17 (Greensavers never returned consumer's call when he challenged service being provided); PX 11, Dye, S. Dec. ¶ 6 (Greensavers ignored requests to cancel service).

<sup>22</sup> PX 3, Velez Dec. ¶ 6 & Att. B at 1. In addition, among other things, FDACS questioned Greensavers' address and its real company name since the submitted telemarketing scripts referred to the company as "Financial Revolution." *Id.*

<sup>23</sup> PX 3, Velez Dec. Att. C at 3.

scripts.<sup>24</sup> All of the scripts, however, contain the same core deceptive claims.<sup>25</sup> In its last and final submission to FDACS, Greensavers' still promises significant credit card interest rate reductions that will save consumers at least \$2500 and allow them to get out of debt three to five times faster without an increase in monthly payments.<sup>26</sup>

### B. Mailing It In: Defendants' Failure to Deliver

Consumers do not have to wait long to realize that Greensavers does little to follow through on its promises. After collecting consumers' credit card information, Greensavers sometimes immediately initiates three-way calls with the consumer and the consumer's credit card companies. During these calls, Greensavers' telemarketers ask the credit card company to lower the consumer's interest rate,<sup>27</sup> and the credit card company either declines, or in rare cases offers a slight reduction.<sup>28</sup> This is not surprising; credit card companies are

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<sup>24</sup> Not surprisingly, the scripts sent to FDACS are different from those scripts obtained by Greensavers' former employee. Cf. PX 6, Ramsey Dec. Att. A ("Closer Script" used by Greensavers/Advanced Data Solutions in June 2012), with PX 3, Velez Dec. Att. F at 6-7 ("Closer Script" submitted to FDACS).

<sup>25</sup> See PX 3, Velez Dec. Att. A at 19 ("Now, based on the standings that have come back, once we reduce these rates you are looking at saving approximately \$\_\_\_\_ in interest and finance charges that you will not have to save a minimum of at least \$2,500 and also to be out of debt 3-5 times faster and your monthly payments will not be any larger than they are right now.") & ("Now, as far as your interest rates go, our goal is to get your rates down to as close to a [sic] 0% as possible. Our first negotiation you can expect to see your interest rates cut in approximately half...."); *id.* Att. C at 10 (same); *id.* Att. D at 8 (same); *id.* Att. F at 6 (same).

<sup>26</sup> See *id.* at Att F. at 6.

<sup>27</sup> Sometimes the credit card issuer insists on speaking with the consumer directly. See PX 18, Reid Dec. ¶ 6 (representative wanted to speak with consumer to obtain password and account number); PX 13, Jay Dec. ¶ 5(same).

<sup>28</sup> PX 19, Voogd Dec. ¶ 5 (credit card company refused to lower rate); *see also* PX 7, Arenburg Dec. ¶ 7 (interest rate reduced from 18% to 15.9%, "nowhere near the 0% that [the representative] had promised"); PX 9, Christman Dec. ¶ 7 (interest rate lowered by 1-2%); PX 13, Jay Dec. ¶¶ 5-6 (no reduction for one card and only minor reductions for other cards); PX 18, Reid Dec. ¶ 6 (credit card interest rate reduced from 24.9% to 15.23%, but not to the promised 6%).

generally only likely to agree to minor credit card rate adjustments even for their best customers. As an expert in the credit card industry explains, credit card issuers assess many individualized factors in deciding whether to reduce interest rates, and often are willing to reduce rates 1-3% only for their most credit worthy customers.<sup>29</sup>

Other times, Greensavers applies for new credit cards for consumers with introductory 0% annual percentage rates. Sometimes, the new cards are immediately canceled by the issuer once it realizes a third party opened the card.<sup>30</sup> Other times, consumers become suspicious when they receive the cards because Greensavers had never mentioned that it would be applying for new credit cards on the consumers' behalf.<sup>31</sup> Some consumers report that though they did understand that Greensavers would obtain new credit cards for them, they were told the 0% interest rate would last until the existing balance was paid off when it, in fact, was only introductory.<sup>32</sup> Yet others were told that Greensavers would transfer their existing credit card balances, which the company failed to do.<sup>33</sup> No

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<sup>29</sup> PX 5, Wilhelm Dec. ¶ 24 & ¶ 25 ("Since interest revenue represents the lion's share of credit card revenue needed to cover expenses and make a profit, any claims to reduce interest rates to as low as 0% to 7% are totally unrealistic.").

<sup>30</sup> PX 7, Arenburg Dec. ¶ 11 & Att. A; PX 16, Muniak Dec. ¶ 14.

<sup>31</sup> PX 18, Reid Dec. ¶ 10 (consumer "in shock" when she received new GM Card); PX 21, Weisbach Dec. ¶ 6 (consumer refused Greensavers' services yet still was sent a new credit card from HSBC); PX 12, Heisey Dec. ¶ 7 (consumer "very frustrated" to receive three new credit cards in the mail after telling Greensavers she did not want new credit cards); PX 13, Jay Dec. ¶ 10 (received a new Visa card she never authorized to be opened).

<sup>32</sup> PX 7, Arenburg Dec. ¶ 8 (Greensavers promised that the 0% rate "would remain in place for as long as it took" for consumer to pay down her entire balance) & ¶ 12; PX 20, Walley Dec. ¶ 4 (told that the new 0% rate would remain in place until the entire balance was paid off) & ¶ 10.

<sup>33</sup> PX 16, Muniak Dec. ¶ 17.

matter what the scenario, however, Greensavers does not achieve any significant savings for consumers. Indeed, Greensavers is no better positioned than consumers are in dealing with their credit card companies to negotiate interest rate reductions.<sup>34</sup>

Perhaps in an attempt to appear as if it is offering a real service, Greensavers often sends consumers a packet of materials<sup>35</sup> which includes, among other things, a debt analysis, an invoice,<sup>36</sup> and an agreement the consumer is supposed to sign and return. This service agreement indicates that consumers will not be charged if “we are unable to show you a minimum savings of \$3000 in interest and finance charges.”<sup>37</sup> By this point, however, Greensavers has *already* charged consumers a significant fee. The debt analysis seems to do little more than list consumers’ credit cards (and often not completely) and calculate different payment scenarios.<sup>38</sup> There is nothing enlightening about Greensavers’ analysis and certainly not anything worth \$1000, let alone nearly \$3000.<sup>39</sup>

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<sup>34</sup> See PX 5, Wilhelm Dec. ¶ 32 (“Not only do third parties such as the FTC Defendants not have leverage, clout, or formal relationships with issuers, in fact, the involvement of a third party in negotiating a rate reduction is counterproductive for the consumer.”); see also PX 11, Dye, S. Dec. ¶ 5 (“I was so upset about what my husband told me he had done because I knew that we could call our credit card issuers and negotiate with them to lower our interest rate without paying a fee.”); PX 22, Wineberg Dec. Att. A at 1 (previously had procured 0% interest rate credit cards for her elderly mother on her own).

<sup>35</sup> See, e.g., PX 20, Walley Dec. Att. B.

<sup>36</sup> The invoices sometimes list a charge for “The Green Savers Report” or an “Android Tablet” that is neither discussed nor delivered. See PX 7, Arenburg Dec. Att. D at 18 (“Android Tablet”); PX 9, Christman Dec. ¶ 17 & Att. B at 22 (“The Green Savers Report” never discussed); PX 11, Dye, S. Dec. Att. F.

<sup>37</sup> PX 9, Christman Dec. ¶ 15 & Att. B at 8; see also PX 7, Arenburg Dec. Att. D at 9 (will not be charged unless “a minimum savings of \$2,000.00, in interest and finance charges” achieved).

<sup>38</sup> PX 20, Walley Dec. Att. B at 8-10; PX 7, Arenburg Dec. Att. D at 10-11.

<sup>39</sup> The financial advice Greensavers provides mostly consists of pithy statements like “make your payments on time,” “don’t spread yourself too thin,” and “stay within your limit.” PX 20, Walley Dec. Att. B at 5; see also PX 7, Arenburg Dec. Att. D at 8 (same language in Advanced Data Solutions package).

### C. The Phone Keeps Ringing: Defendants' Blatant Disregard for the TSR

In order to perpetrate its scam, Greensavers' intrudes into consumers' lives by blasting them with unwanted telemarketing calls. Often times, these calls are from "Rachel" at "Card Services,"<sup>40</sup> but Greensavers also uses live telemarketers to contact consumers.<sup>41</sup> Either way, Greensavers does not promptly identify itself,<sup>42</sup> the purpose of its call, or the nature of its services.<sup>43</sup> Greensavers also hides behind false caller identification information, using "spoofed" telephone numbers, in order to frustrate consumers' efforts to complain.<sup>44</sup>

Greensavers spares no one in seeking new victims for its scam. Greensavers calls consumers who are on the federal Do Not Call Registry,<sup>45</sup> and the company does not even

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<sup>40</sup> PX 17, O'Connor Dec. ¶ 3; PX 14, Gorham Dec. ¶ 4; PX 2, McKenney Dec. ¶ 36 (many DNC complaints associated with Greensavers' telephone numbers mention "Rachel" calls).

<sup>41</sup> See PX 7, Arenburg Dec. ¶ 3; PX 13, Jay Dec. ¶ 3; PX 15, Mays Dec. ¶ 4; PX 16, Muniak Dec. ¶ 3; PX 19, Voogd Dec. ¶ 3 (representative identified herself as "Accounts Services"); PX 21, Weisbach Dec. ¶ 3.

<sup>42</sup> Indeed, Greensavers trains its employees not to reveal the company name. See PX 6, Ramsey Dec. ¶ 16 ("I was instructed at training, and during my time on the floor, not to reveal the actual company name."); see also PX 2, McKenney Dec. ¶ 36 (consumers report being hung up on when they ask for company name). With persistence, some consumers are able to convince the telemarketer to reveal who is calling them before revealing any sensitive financial information. PX 17, O'Connor Dec. ¶ 4; see also PX 14, Gorham Dec. ¶ 4 (consumer feigned interest in the service in order to get Greensavers' name).

<sup>43</sup> PX 6, Ramsey Dec. ¶ 14 ("Many people asked me what credit card company was calling, under the mistaken impression that I worked for one of their credit card companies.") & ¶ 16 (a rebuttal script directed telemarketers that they were calling from "card services and that consumers had been referred to [Greensavers] by one of their credit cards in good standing"); see also PX 18, Reid Dec. ¶ 9 ("I had believed that I was dealing with Cardmember Services department of AT&T Universal, or its parent, Citibank."); PX 20, Walley Dec. ¶ 5 (believed Greensavers was his credit card company).

<sup>44</sup> See, e.g., PX 17, O'Connor Dec. ¶ 6 (telephone number from caller ID was not a working number); PX 18, Reid Dec. ¶ 7 (same); PX 2, McKenney Dec. ¶ 35(b) (spoofed Greensavers' number appears on many other complaints).

<sup>45</sup> See, e.g., PX 7, Arenburg Dec. ¶ 3; PX 9, Christman Dec. ¶ 4; PX 14, Gorham Dec. ¶ 3; see also PX 2, McKenney Dec. ¶¶ 34 & 36 (summarizing DNC complaints filed against Greensavers and against telephone numbers associated with Greensavers).

pretend to honor consumers' specific do not call requests. Indeed, one former employee reports that nearly everyone she spoke with during her brief employment was pleading for Greensavers' robocalls to stop.<sup>46</sup> Not only does Greensavers fail to maintain an internal do not call list, but the company actually instructs its telemarketers to hang up on consumers who are requesting that the calls stop.<sup>47</sup> Ultimately, the former employee was so "alarmed" by Greensavers' illegal practices, she decided to quit her job after only a few days.<sup>48</sup>

## II. DEFENDANTS

Since it was formed as a Florida corporation in June 2010 by Defendant Christopher Adams and Pavac Inc.,<sup>49</sup> Defendant Greensavers and its managers have taken every opportunity to hide the real perpetrators. In the two years since it was formed, Greensavers has had a parade of people appearing on its corporate papers.<sup>50</sup> In addition to the revolving

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<sup>46</sup> PX 6, Ramsey Dec. ¶ 14 (answered more than 400 calls in two days, nearly all do not call requests).

<sup>47</sup> *Id.* ¶ 17 ("I was also troubled when I was instructed to hang up on people who asked to be placed on the do not call list.").

<sup>48</sup> *Id.* ¶ 18 ("At the end of my second day working the phones, I decided not to return to Greensavers the next day. The company seemed to be engaged in illegal practices, and I did not want to be a part of the business.").

<sup>49</sup> PX 2, McKenney Dec. ¶ 6(a) & Att. A at 3-4. Pavac Inc. is another Florida corporation of which Defendant Jawalapersad was a director. *Id.* at ¶ 7(b) & Att. B at 1-3. We recently learned that Pavac was administratively dissolved in September 2012 (*id.* ¶ 7(a)), but its primary business appears to have been a gas station. *Id.* at ¶ 7(d) & Att. B at 9.

<sup>50</sup> In addition to Adams and Pavac, Greensavers has had four other members, some appearing on the corporate papers only for a few months. PX 2, McKenney Dec. ¶ 6(b) & Att. A at 8-9 (Pavac removed as a managing member); 12-13 (Diego & Diana Gil, and Pavac added); 17-18, 21 (Adams removed); 17-18, 25 (Rivero added and removed); 28-29, 38 (Smeir added and removed); 32, 35 (Gils removed).

door of members, Greensavers has used different company names,<sup>51</sup> addresses,<sup>52</sup> and phone numbers,<sup>53</sup> all in an apparent effort to evade law enforcement. In fact, Greensavers even has a presence in Aruba,<sup>54</sup> where it is likely funneling funds.<sup>55</sup> Its shifting location has not insulated Greensavers, however, from receiving the BBB's "F" rating,<sup>56</sup> nor has it deterred consumers from lodging hundreds of DNC and fraud-related complaints against the

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<sup>51</sup> Greensavers registered "Elite Services" (*id.* at ¶ 6(e) & Att. A at 39), listed it as a dba on its bank accounts (*id.* at ¶¶ 15, 17), and has used this name with consumers. PX 11, Dye, S. Dec. ¶¶ 7-8, 12 & Att. B (descriptor for Greensavers' charge on consumers' credit card appeared as "Elite") & Att. H (Internet complaints referring to "Elite Services"). Most recently, however, Greensavers has been using the name "Advanced Data Solutions." *See, e.g.*, PX 7, Arenburg Dec. ¶ 3 (representative said he was from "Advanced Data Solutions") & Att. D at 22 (using Greensavers' same address at 5703 Red Bug Lake Road, Suite 305). The former employee reports that Greensavers had just changed its name to Advanced Data Solutions when she worked there in early June 2012. PX 6, Ramsey Dec. ¶ 3. Not surprisingly, the Advanced Data Solutions website bears a striking resemblance to the Greensavers' site. PX 2, McKenney Dec. ¶ 26 & Atts. K & L. Of course, Greensavers tries to hide its name altogether – at least before it has obtained the consumer's billing information. *See, supra*, n. 42.

<sup>52</sup> On its October 2011 Florida telemarketing application, Greensavers listed a Casselberry, Florida address. PX 3, Velez Dec. ¶ 4 & Att. A at 7. Previously, Adams filed an address change for Greensavers in November 2010, in which Greensavers was then said to be operating from Fern Park, Florida. PX 2, McKenney Dec. ¶ 6(b)(i) & Att. A at 8-9. Yet another Casselberry address was added in February 2012 (*id.* ¶ 6(d)(iv)), and Greensavers' current location in Longwood, Florida (*see* PX 6, Ramsey Dec. ¶ 7) is not listed on any of the company's official documents.

<sup>53</sup> The BBB has identified four telephone numbers associated with Greensavers, the latest known number having been disconnected. PX 4, Downing Dec. ¶ 10 (877-620-4922; 407-637-7244; 855-977-4237; 855-220-6477); *see also* PX 2, McKenney Dec. ¶ 32(c) & Att. P at 3 (job posting for inbound call center identifying 855-220-6477 and 855-977-4237 as telephone numbers for Advanced Data Solutions). Greensavers notified one consumer that it had changed its telephone number because of a recent storm. PX 7, Arenburg Dec. ¶ 18 & Att. D at 1 (customer service number changed from 1-855-977-4237 to 1-855-220-6477). Of course, it is more likely that Greensavers was trying to hide from the BBB and angry consumers.

<sup>54</sup> PX 2, McKenney Dec. ¶ 9. Avinash Jawalpersad is listed as the company's managing director. *Id.* at ¶ 9(b) & Att. D.

<sup>55</sup> *See* PX 22, Wineberg Dec. ¶ 4 (Greensavers charged her mother a \$56.70 foreign transaction fee, which it eventually refunded).

<sup>56</sup> PX 4, Downing Dec. ¶ 9 & Att. A. Greensavers earned its "F" rating in part because the company typically does not respond to consumer complaints and has rebuffed the BBB's efforts to compile basic information about the business. *Id.* ¶ 9.

company.<sup>57</sup>

Defendants Adams and Jawalpersad have had a consistent presence on Greensavers' corporate records – each having signed the annual report in 2011 and 2012, respectively.<sup>58</sup> Further, both have been signatories on Greensavers' bank accounts and have written checks from those accounts.<sup>59</sup> Adams also signed Greensavers' telemarketing registration with the Florida state authorities,<sup>60</sup> and even though Adams was removed from the corporate papers in October 2011, he opened up a mail drop for Greensavers in November 2011.<sup>61</sup> Finally, Florida state authorities have learned from other telemarketers in the Orlando-area that Defendant Jawalapersad manages Greensavers' telemarketing operation.<sup>62</sup>

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<sup>57</sup> In addition to 55 fraud complaints against Greensavers, 106 DNC complaints have been filed against Greensavers, and thousands more against telephone numbers Greensavers has used in its robocalls. PX 2, McKenney Dec. ¶¶ 33-34 & ¶¶ 37(a)(i) & (b)(i).

<sup>58</sup> *Id.* ¶ 6(c). While Adams was listed as a managing member of the LLC from June 2010 to October 2010, Jawalpersad has never been listed personally as a member of Greensavers. Instead, he has been acting on behalf of Pavac Inc., of which he is a director. *Id.* ¶ 7(b). The other two directors of Pavac appear to be related to Jawalpersad. *Id.* (both have the same last name). Pavac also is a managing member of Advanced Data Software LLC. *Id.* 8(b). Advanced Data Software is the current registered agent of Greensavers, (*Id.* 6(d)(i))), and, obviously bears a striking resemblance to the name currently used by Greensavers, Advanced Data Solutions. *See* PX 6, Ramsey Dec. ¶ 7.

<sup>59</sup> PX 2, McKenney Dec. ¶¶ 12(b) & (c) & Att. E at 5, 9, 13 & 17 (Adams and Jawalpersad signatories on Suntrust Bank account); *id.* ¶¶ 15, 17 & Att. F at 2, 4-5 & Att. G at 2-4 (both signatories on Hancock Bank accounts); *id.* ¶ 16(e) (Adams and Jawalpersad have written payroll checks).

<sup>60</sup> This application included several iterations of Greensavers' deceptive telemarketing scripts. *See* PX 3, Velez Dec. Att. A at 19-22 & Att. F at 6-9. In addition, Adams signed the telemarketing bond as "CEO" of Greensavers. *Id.* at ¶ 5 & Att. A at 14.

<sup>61</sup> PX 2, McKenney Dec. ¶ 20(b) & Att. I at 3-4. Adams also is the current registrant contact for two of Greensavers' domain names. *Id.* at ¶ 28 & Att. M at 4-5.

<sup>62</sup> PX 3, Velez Dec. ¶ 10 (telemarketers have informed FDACS investigator that Jawalpersad is in charge of Greensavers). Jawalpersad listed himself as Greensavers' representative on the company's DNC registration with the FTC. PX 2, McKenney Dec. ¶ 31 & Att. O at 1. This is not to suggest that Greensavers has made any effort to actually abide by the DNC Registry. *See id.* Att. O at 3 (Greensavers has not accessed any area codes for which it registered to access).

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### **III. ARGUMENT**

Greensavers' business practices violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and multiple provisions of the TSR, 16 C.F.R. Part 310. To prevent any further injury to innocent consumers, the Commission asks that the Court issue *ex parte* its proposed TRO. That order would enjoin Defendants' ongoing law violations and would provide for other equitable relief designed to preserve the Court's ability to provide full restitution to victims at the conclusion of the proceeding.

#### **A. This Court has the Authority to Grant the Requested Relief.**

The FTC Act provides that "in proper cases the Commission may seek, and after proper proof, the court may issue a permanent injunction." 15 U.S.C. § 53(b). The practice of defrauding consumers by misrepresenting or omitting material facts in violation of Section 5(a) of the FTC Act presents a "proper case" for injunctive relief under 15 U.S.C. § 53(b). *See FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468 (11th Cir. 1996); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1026-28 (7th Cir. 1988); *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1111 (9th Cir. 1982). Once the Commission invokes the federal court's equitable powers, moreover, the full breadth of the court's authority is available, including the power to grant such ancillary final relief as rescission of contracts and restitution. *Gem Merch.*, 87 F.3d at 468; *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-72 (7th Cir.), *cert. denied*, 493 U.S. 954 (1989). The court may also enter a TRO, a preliminary injunction, and whatever additional preliminary relief is necessary to preserve the possibility of providing effective final relief. *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1432 (11th Cir. 1984);

*see also World Travel*, 861 F.2d at 1026. Such ancillary relief may include a freeze of defendants' assets to preserve them for eventual restitution to victims, and the appointment of a receiver. *U.S. Oil & Gas*, 748 F.2d at 1432-34; *see also World Travel*, 861 F.2d at 1031; *FTC v. Am. Nat'l Cellular, Inc.*, 810 F.2d 1511, 1512, 1514 (9th Cir. 1987).<sup>63</sup>

**B. The FTC Meets the Applicable Standard for Injunctive Relief.**

Section 13(b) of the FTC Act authorizes a temporary restraining order and a preliminary injunction “[u]pon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest.” 15 U.S.C. § 53(b). In the Eleventh Circuit, courts consider two factors in determining whether to grant a preliminary injunction under Section 13(b): 1) the likelihood that the Commission will succeed on the merits; and 2) the balance of equities. *See FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1217 (11th Cir. 1991); *see also World Travel*, 861 F.2d at 1029. Unlike private litigants, moreover, the Commission “need not prove irreparable harm.” *See Univ. Health*, 938 F.2d at 1218.

**C. The FTC Has Demonstrated a Likelihood of Success on the Merits.**

**1. Defendants are Violating the FTC Act and the TSR.**

Defendants' activities undoubtedly qualify as deceptive acts or practices under

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<sup>63</sup> The court's expansive equitable powers also are available under the TSR, as all FTC Act remedies are equally available under the TSR. *See* 15 U.S.C. § 6105(b). Courts are authorized to enter any relief necessary to redress injury to consumers caused by the TSR violation, including the “rescission or reformation of contracts [and] the refund of money or return of property.” 15 U.S.C. §§ 57b(a)(1) & (b).

Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).<sup>64</sup> A deceptive act or practice involves a material misrepresentation that is likely to mislead consumers acting reasonably under the circumstances. *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *see also FTC v. World Media Brokers*, 415 F.3d 758, 764 (7th Cir. 2005). Courts evaluate the overall net impression created by the acts or practices. *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984), *cert. denied*, 470 U.S. 1084 (1985); *FTC v. Peoples Credit First, LLC*, No. 8:03-CV-2353-T, 2005 WL 3468588, at \*6 (M.D. Fla. Dec. 18, 2005).

The same conduct that violates the FTC Act also violates the TSR. In October 2010, the TSR was amended to specifically include the debt relief services industry,<sup>65</sup> prohibiting sellers and telemarketers in connection with the telemarketing of debt relief services from misrepresenting any material aspect of that service. 16 C.F.R. § 310.3(a)(2)(x). This includes, but is not limited to, deceptive claims concerning the amount of money or the percentage of the debt amount that a customer may save by using such service and the amount of time necessary to achieve the represented results. *Id.*

In this case, Defendants violate the FTC Act and the TSR by making a series of false claims that are designed to induce consumers to purchase or pay for credit card interest rate reduction services. As described above, Defendants misrepresent that they will be able to

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<sup>64</sup> The FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce,” including “such acts or practices involving foreign commerce that . . . involve material conduct occurring within the United States,” and the available remedies include “restitution to domestic or foreign victims.” 15 U.S.C. § 45(a)(4)(A)-(B).

<sup>65</sup> “Debt relief service” includes a program or service represented (directly or by implication) to reduce a person’s interest rate. 16 C.F.R. § 310.2(m).

substantially reduce consumers' credit card interest rates, and as a result will be able to, in a short time, save them thousands of dollars and cause them to pay off their credit card debt much faster. The Commission's sworn consumer declarations demonstrate that these lies often succeed in misleading consumers into purchasing Defendants' credit card interest rate reduction services when they otherwise would not have. Defendants' false claims are clearly material, in that they are likely to, and do, affect consumers' conduct.

As described above, Defendants' conduct also violates a series of specific provisions in the TSR. In addition to prohibiting misrepresentations and material omissions, the TSR imposes requirements that apply to specified practices:

**TSR Section 310.4(a)(5)(i):** The TSR flatly prohibits Defendants from requesting or receiving a fee in advance of providing debt relief service until and unless the seller or telemarketer has renegotiated or otherwise altered the terms of at least one debt for a customer and the customer has made at least one payment to the creditor on the newly altered debt. Defendants charge consumers immediately – most of the time before they have secured any interest reduction for consumers and always before consumers have made any payment to the credit card company after a lower rate has been negotiated.

**TSR Section 310.4(b)(1)(v)(A)(i)-(iv):** The TSR bans robocalls unless the seller or marketer has consumers' express agreement, in writing, to receive such calls. 16 C.F.R. § 310.4(b)(1)(v)(A)(i)-(iv). Defendants have no such permission, of course, and their robocalls are flatly prohibited.

**TSR Sections 310.4(b)(1)(iii)(A) & (B):** These provisions prohibit telemarketers

from initiating outbound telephone calls to :1) consumers who have told the seller or telemarketer to stop calling; and 2) telephone numbers that are on the National Do Not Call Registry. 16 C.F.R. § 310.4(b)(1)(iii)(A) & (B). Defendants' telephone calls have generated hundreds of DNC complaints. Defendants pay no attention to the Registry, or to consumers' removal requests conveyed to Defendants.

**TSR Section 310.4(a)(8):** This provision requires telemarketers to transmit or cause to be transmitted the telephone number and name of the telemarketer or seller to any caller identification service in use by a recipient of a telemarketing call. 16 C.F.R. § 310.4(a)(8). Defendants do not transmit a telephone number or their name to consumers' caller ID services. Defendants instead spoof such information, in clear violation of the TSR.

**TSR Section 310.4(d):** This provision requires telemarketers to disclose "truthfully, promptly, and in a clear and conspicuous manner" the identity of the seller, that the purpose of their telemarketing call "is to sell goods or services," and the nature of those goods or services. 16 C.F.R. § 310.4(d)(1), (2) & (3). Defendants' robocalls never disclose their identities, nor that they are selling a credit card interest rate reduction service. This conduct also violates TSR Section 310.4(b)(1)(v)(B)(ii), which mandates that these disclosures be made at the outset of all outbound telephone calls delivering prerecorded messages. 16 C.F.R. § 310.4(b)(1)(v)(B)(ii).

## **2. The Individual Defendants Are Personally Liable.**

The individual Defendants – Christopher Adams and Vikash Jawalapersad – are responsible for the deceptive and unfair practices of the companies they control or participate

in and thus should be subject to the TRO and asset freeze. Individual owners and officers may be held liable for injunctive relief and restitution if they: (1) either participated directly in or had some measure of control over the challenged practices; and (2) had or should have had some knowledge or awareness of those practices. *See Gem Merch.*, 87 F.3d at 470; *World Media Brokers*, 415 F.3d at 764; *Amy Travel*, 875 F.2d at 573. Authority to control may be evidenced by “active involvement in the corporate affairs, including assuming the duties of a corporate officer.” *World Media Brokers*, 415 F.3d at 764 (citing *Amy Travel*, 875 F.2d at 573). The Commission also

is not required to prove subjective intent to defraud. Instead, the FTC may fulfill the knowledge requirement with evidence that the individuals had actual knowledge of material misrepresentations, reckless indifference to the truth or falsity of such misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.

*Id.* (citations and internal quotation marks omitted). An individual’s “degree of participation in business affairs is probative of knowledge.” *Amy Travel*, 875 F.2d at 573.

The Commission is likely to succeed in showing that Adams and Jawalapersad are liable under these standards. Adams was a managing member of Greensavers, an authority position which alone establishes his ability to control corporate acts and practices. *See, e.g.*, *World Media Brokers*, 415 F.3d at 764-65 (corporate officer “hard-pressed to establish that he lacked authority or control” over corporate entity); *Amy Travel*, 875 F.2d at 574. Jawalapersad, though he may not have personally appeared on Greensavers’ corporate papers, one of his other companies is now the sole managing member of Greensavers and he

signed Greensavers' annual report;<sup>66</sup> he also has been a signatory on bank accounts along with Adams;<sup>67</sup> and, is the reputed manager of Defendants' telemarketing operation.<sup>68</sup>

**D. The Balance of Equities Tip Decidedly in the Commission's Favor.**

Not only is the Commission likely to succeed on the merits, but the balance of the equities also tips decidedly in the Commission's favor. In balancing the equities, the Court must assign greater weight to the public interest than to any of defendants' private concerns.

*World Travel*, 861 F.2d at 1029; *see also FTC v. Weyerhaeuser Co.*, 665 F.2d 1072, 1083 (D.C. Cir. 1981) (private equities alone insufficient to justify denial of injunction).

The public equities in this case are compelling, as the public has a strong interest in immediately halting a deceptive scheme about which hundreds of consumers have complained, and in preserving the assets necessary to provide effective final relief to victims. Defendants, by contrast, have no legitimate interest in continuing to violate the law by operating a business permeated with fraud. *See FTC v. Para-Link Int'l, Inc.*, No. 8:00-CV-2114-T-17TBM, 2001 WL 1701537, at \*6 (M.D. Fla. Feb. 28, 2001).

**E. A TRO Should Be Issued *Ex Parte* and Should Include an Asset Freeze, a Temporary Receivership, and Other Ancillary Relief.**

The Commission is concerned that in light of the scope of their fraud, Defendants are likely to dissipate assets and destroy records if given notice of the relief being sought. The FTC Act authorizes a district court to use its inherent equitable authority to "grant any

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<sup>66</sup> See, *supra*, nn. 49 & 58.

<sup>67</sup> See, *supra*, n. 59.

<sup>68</sup> See, *supra*, n. 62.

ancillary relief necessary to accomplish complete justice.” *U.S. Oil & Gas*, 748 F.2d at 1434. The Commission asks that the Court employ that authority here to issue a TRO that includes a freeze of Defendants’ assets, the appointment of a temporary receiver, and other ancillary relief necessary to immediately halt Defendants’ scheme and to preserve the possibility of providing meaningful relief to victims. Courts in this district have repeatedly issued TROs *ex parte* that contain precisely this type of relief.<sup>69</sup>

An *ex parte* TRO is warranted when the facts show that irreparable injury, loss, or damage will result before the defendants can be heard in opposition. *See Fed. R. Civ. P.* 65(b); Local Rule 4.05, Middle District of Florida. Part of the relief sought by the Commission here is restitution for consumers victimized by Defendants’ scheme. The FTC seeks to freeze Defendants’ assets and to appoint a temporary receiver over the corporate Defendant to preserve the possibility for such relief. The FTC’s extensive experience with others engaged in similar deceptive schemes demonstrates that Defendants may withdraw funds from bank accounts and destroy pertinent records if given notice of the FTC’s action.<sup>70</sup> In this case, the egregiously deceptive nature of Defendants’ scheme, the steps they have

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<sup>69</sup> See, e.g., *FTC v. Vacation Prop. Servs. Inc.*, No. 8:11-cv-595-JDW-MAP (M.D. Fla. Mar. 22, 2011); *FTC v. JPM Accelerated Servs. Inc.*, No. 6:09-cv-2021-ORL-28-KRS (M.D. Fla. Nov. 30, 2009); *FTC v. FTN Promotions, Inc.*, No. 8:07-CV-1279-T-30TGW (M.D. Fla. July 23, 2007); *FTC v. Global Mktg. Group, Inc.*, No. 8:06-CV-2272-T-30TGW (M.D. Fla. Dec. 12, 2006); *FTC v. Guerra*, No. 6:04-CV-1395-ACC-KRS (M.D. Fla. Sept. 21, 2004); *FTC v. Bryant*, No. 3:04-CV-897-TJC-MMH (M.D. Fla. Sept. 17, 2004); *FTC v. Debt Mgmt. Found. Servs., Inc.*, No. 8:04-CV-1674-EAK-MSS (M.D. Fla. July 20, 2004); *FTC v. Peoples Credit First, LLC*, No. 8:03-CV-2353-TBM (M.D. Fla. Nov. 10, 2003); *FTC v. Holloway*, No. 3:02-CV-343-HES (M.D. Fla. Apr. 12, 2002); *FTC v. Para-link, Int'l, Inc.*, No. 8:00-CV-2114-EAK (M.D. Fla. Oct. 17, 2000); *FTC v. Rothbart*, No. 6:99-1485-UA (M.D. Fla. Nov. 22, 1999).

<sup>70</sup> See Declaration and Certification of Plaintiff’s Counsel Pursuant to Fed. R. Civ. Pr. 65(b) in Support of Plaintiff’s *Ex Parte* motion for a Temporary Restraining Order and *Ex Parte* Motion to Temporarily Seal File, filed herewith.

taken to conceal their name and location in an apparent effort to avoid detection, the constantly changing roster of corporate officers, and their refusal to respond to complaints lodged against them, all indicate there is a serious risk that these Defendants will destroy documents and dissipate assets if given advance notice of the Commission's motion. Defendants could quickly destroy relevant documents and transfer the substantial proceeds of their scheme offshore at the touch of a button. There is thus a compelling need that the TRO be issued *ex parte*.

For the same reasons, the Court should freeze Defendants' assets and appoint a temporary receiver over the corporate Defendant, Greensavers. An asset freeze should be imposed once the Court determines that the Commission is likely to prevail on the merits and that restitution would be an appropriate remedy at the conclusion of the proceedings. *See World Travel*, 861 F.2d at 1031 & n.9. (district court at that juncture "had a duty to ensure that" defendants' assets were available for restitution). The freeze here should extend to individual assets as well because the Commission is likely to succeed in showing that the individual Defendants are liable for restitution. *See World Travel*, 861 F.2d at 1031.

The appointment of a temporary receiver also would serve to prevent the destruction of documents and the dissipation of assets while the case is pending. Such an appointment is particularly appropriate where Defendants' pervasive fraud presents the likelihood of continued misconduct. If Defendants are allowed to remain in control of their business, it is likely that evidence will be destroyed and the fruits of their fraud will be dissipated. A temporary receiver would eliminate those risks without disrupting any legitimate business

activity. At the same time, a temporary receiver would be helpful to the court in assessing the extent of Defendants' fraud, tracing the proceeds of that fraud, preparing an accounting, and making an independent report of Defendants' activities to the Court.

#### IV. CONCLUSION

Defendants have caused and are likely to continue to cause substantial injury to the public through their violations of the FTC Act and the TSR. The Federal Trade Commission respectfully requests that the Court issue the proposed TRO to protect the public from further harm and to help ensure the possibility of effective final relief.<sup>71</sup>

Respectfully Submitted,

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Dated: October 22, 2012

  
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<sup>71</sup> Along with this Memorandum, the FTC has submitted a proposed *Ex Parte* Temporary Restraining Order with Asset Freeze, Appointment of a Receiver, Other Equitable Relief and Order to Show Cause Why a Preliminary Injunction Should Not Issue.